

Stephen A. Roberts (SBN 17019200)
Robert P. Franke (SBN 07371200)
Robert Tyler (SBN 24009347)
Duane J. Brescia (SBN 24025265)
STRASBURGER & PRICE, LLP
600 Congress, Suite 1600
Austin, Texas 78701
Tel. (512) 499-3600 / Fax (512) 499-3643
stephen.roberts@strasburger.com
bob.franke@strasburger.com
robert.tyler@strasburger.com
duane.brescia@strasburger.com

ATTORNEYS FOR DEBTOR SUPERIOR AIR PARTS, INC.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	Case No. 08-36705
	§	
SUPERIOR AIR PARTS, INC.,	§	Chapter 11
	§	
Debtor.	§	
	§	
	§	

**AMENDED RESPONSE TO MOTION OF MAHLE ENGINE COMPONENTS USA, INC.
FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM
UNDER 11 U.S.C. SECTION 503(b)(9) [Docket No. 94]**

TO: THE HONORABLE BARBARA J. HOUSER,
UNITED STATES BANKRUPTCY JUDGE:

Superior Air Parts, Inc. ("Superior" or "Debtor"), as debtor and debtor-in-possession, and for its Amended Response to Mahle Engine Components USA, Inc.'s ("Mahle" or "Creditor") motion (the "Motion") for an order under § 503(b)(9) of Title 11 of the United States Code (the "Bankruptcy Code") [Docket No. 94] requesting allowance and payment of an Administrative Expense Claim, respectfully states as follows:

**I.
RELIEF REQUESTED**

1. Pursuant to its Motion, Mahle seeks allowance and payment of its Administrative Claims under § 503(b)(9) of the Bankruptcy Code. The Debtor objects to

allowance of the claim to the extent the relief is inconsistent with Mahle's previous demand for reclamation of the same goods and further objects to the payment of the § 503(b)(9) claim at this time.

II.
BASIS FOR THE RELIEF REQUESTED

2. Section 546(c) of the US Bankruptcy Code provides creditors with a right of reclamation of goods delivered to the debtor within 45 days prior to commencement of the case. Section 503(b)(9) of the US Bankruptcy Code provides that a supplier of goods is entitled to an administrative claim for the value of goods delivered within 20 days prior to commencement of the case.

3. Mahle's claims are inconsistent in that it has made a claim under both §§ 503 and 546 for the same goods.

4. Upon receipt of Mahle's reclamation demand, the Debtor segregated all goods still in its possession claimed in the reclamation demand. The Debtor has filed a Motion to Return Reclaimed Goods under §546(c) pursuant to which the Debtor proposes to return goods to Mahle which the Debtor had in its possession at the time Mahle made its reclamation demand.

5. At the time Debtor received Mahle's reclamation demand, Debtor still had possession of all goods subject to the demand which were eligible for a § 503(b)(9) claim except \$1,186.23 in goods, consisting of \$130.68 under invoice number 2291942 and \$1,055.55 under invoice number 7209505. These goods were sold prior to Debtor's receipt of the reclamation claim. Accordingly, the allowance of Mahle's §503(b)(9) claim should be limited to \$1,186.23.

6. The Debtor opposes the payment of the administrative claim at this time.

7. It is essential to the Debtor's ability to continue to operate its businesses and ultimately reorganize that the Debtor maintain sufficient liquidity and cash flow. To pay pre-petition Administrative Claims immediately could severely impact the Debtor's ability to stay afloat long enough to consummate the purchase and could also result in disparate treatment of creditors.

8. The timing of payment of an administrative expense claim is within the discretion of the Court. *In re Garden Ridge Corp.*, 323 B.R. 136 (Bankr. D. Del. 2005).

9. "In making this determination, one of the chief factors courts consider is bankruptcy's goal of an orderly and equal distribution among creditors and the need to prevent a race to a debtor's assets." *In re HQ Global Holdings, Inc.*, 282 B.R. 169 (Bankr. D. Del. 2002).

10. "Prior to the enactment of 11 U.S.C. § 503(b)(9) [*13] , it was black letter law that the question [of when] the bankruptcy estate should be ordered to pay an allowed administrative expense is within the bankruptcy court's discretion". *In re Bookbinders' Restaurant, Inc.*, No. 06-12302ELF, 2006 Bankr. LEXIS 3749, 2006 WL 3858020 (Bankr. E.D. Pa. Dec. 28, 2006), *citing to*: "E.g., *In re Colortex Industries*, 19 F.3d 1371, 1384 (11th Cir. 1994); *In re HQ Global Holdings, Inc.*, 282 B.R. 169, 173 (Bankr. D. Del. 2002)".

11. Section 503(b)(9) was enacted, apparently, to provide relief to creditors who had provided goods to the Debtor on the eve of bankruptcy. The relief provided, however, was not immediate payment. Instead, the provision exalts the status of the claim from a pre-petition claim, to an administrative claim. The effect of the change of status of the claim is to provide for payment in full upon confirmation of the plan. *In Re*

Plastech Engineered Products, 394 B.R. 147, 152-153 2008 Bankr. (Bankr. D. Mich., September 16, 2008)

12. *In re Global Home Products, LLC*, No. 06-10340(KG), 2006 Bankr. LEXIS 3608, 2006 WL 3791955 (Bankr. D. Del. Dec. 21, 2006), and *In re Bookbinders' Restaurant, Inc.*, No. 06-12302ELF, 2006 Bankr. LEXIS 3749, 2006 WL 3858020 (Bankr. E.D. Pa. Dec. 28, 2006) are the seminal cases on the timing of payment of an administrative claim under Section 503(b)(9). Both cases conclude that there is no right of immediate payment.

13. *Global Home* reiterates the standard enunciated in *In re Garden Ridge Corp.*, 323 B.R. 136 (Bankr. D. Del. 2005) regarding the three factors the Court should consider in determining the timing of payments: prejudice to the Debtor, hardship to the claimant and prejudice to other creditors. 2006 Bankr. LEXIS 3608 at 12.

14. *Bookbinder* notes the *Garden Ridge* standard, but also references consistency with other sections of the code, citing: *In re Dieckhaus Stationers of King of Prussia, Inc.*, 73 B.R. 969, 972 (Bankr. E.D. Pa. 1987) and recitation of the need to avoid a race to the courthouse and to ensure an equal distribution to creditors, citing: *In re HQ Global Holdings, Inc.*, 282 B.R. 169, 173 (Bankr. D. Del. 2002). 2006 Bankr. LEXIS 3749 at 13-14.

15. In this case, all of the above considerations mandate a denial of Mahle's request for payment at this time. Mahle has made no effort to show any hardship. Mahle should be paid pursuant to a plan under 1129(a)(9)(A), along with all other Administrative Expense creditors. To order immediate payment would surely and

immediately start a "race to the courthouse", prompting all other administrative claimants to also seek immediate payment.

16. The Debtor should not be put to the burden (and consequent drain on the estate) of responding to each and every Administrative Expense Claimant's request for immediate payment.

WHEREFORE, the Debtor requests that the Court disallow Mahle's request for allowance of its administrative expense claim in excess of \$1,186.23 and disallow payment of the claim at this time.

Respectfully submitted,

/s/ Stephen A. Roberts

Stephen A. Roberts (SBN 17019200)

Robert P. Franke (SBN 07371200)

Duane J. Brescia (SBN 24025265)

Robert Tyler (SBN 24009347)

STRASBURGER & PRICE, LLP

600 Congress, Suite 1600

Austin, Texas 78701

Tel. (512) 499-3600 / Fax (512) 499-3643

stephen.roberts@strasburger.com

bob.franke@strasburger.com

Robert.tyler@strasburger.com

duane.brescia@strasburger.com

**Bankruptcy Attorneys for Debtor Superior
Air Parts, Inc.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served upon the parties on the attached service list via First Class U.S. Mail, postage prepaid March 9, 2009.

/s/ Stephen A. Roberts

Stephen A. Roberts

Theilert Aircraft Engines
Nieritzstr 14 D-01097
Dresden Germany

Mahle Engine Components
60428 Marine Road
Atlantic IA 50022-8291

KS-Pistoes
Rodovia Arnald, Julio Mauberg
4000 Disrito Industrial No
Nova Odessa SP Brasil CAIZA Postal
91 CEP 13460-000

Airsure Limited
15301 Spectrum Drive, #500
Addison, TX 75001

ECK Industries, Inc.
1602 North 8th Street
Manitowoc, WI 54221-0967

Mahle Engine Components
14161 Manchester Road
Manchester, MO 63011

Crane Cams
530 Fentress Blvd
Daytona Beach, FL 32114

Corley Gasket Co.
6555 Hunnicut Road
Dallas TX 75227

Saturn Fasteners Inc.
425 S. Varney St.
Burbank, CA 91502

Champion Aerospace, Inc.
1230 Old Norris Road
Liberty, SC 29654-0686

Ohio Gasket & Shim
976 Evans Ave.
Akron, OH 44305

Gerhardt Gear
133 East Santa Anita
Burbank CA 91502-1926

Automatic Screw Machine
709 2nd Avenue SE
Decatur, AL 35601

Helio Precision Products
601 North Skokie Highway
Lake Bluff, IL 60044

Knappe & Koester Inc.
18 Bradco Street
Keen, NH 3431

Garlock-Metallic Gasket Div
250 Portwall St., Ste. 300
Houston, TX 77029

AOPA Pilot
PO Box 973
Frederick, MD 21701

Mahle Engine Components
17226 Industrial HWY
Caldwell, OH 43724-9779

Genesee Stamping & Fabricating
1470 Avenue T
Grand Prairie, TX 75050-1222

Seal Science
17131 Daimler
Irvine, CA 92614-5508

Internal Revenue Service
Special Procedures - Insolvency
P.O. Box 21126
Philadelphia, PA 19114

Deirdre B. Ruckman/AVCO
Gardere Wynne Sewell LLP
1601 Elm Street, Ste. 3000
Dallas, TX 75201

David Childs, Ph.D.
Dallas County Tax Assessor/Collector
500 Elm Street, Records Building
Dallas, TX 75202

Thielert AG
Albert-Einstein-Ring 11
D-22761, Hamburg Germany

Betsy Price, Tax Assessor Collector
100 E. Weatherford
PO Box 961018
Fort Worth, TX 76196

Hartford Aircraft Products
94 Old Poquonock Road
Bloomfield, CT 06002

Ace Grinding & Machine Company
2020 Winner Street
Walled Lake, MI 48390

Lynden International
1800 International Blvd. #800
Seattle, WA 98188

Combustion Technologies, Inc.
1804 Slatessville Road
Chatham, VA 24531

Ruhrtaler Gesenkschmiede
F.W. Wengler GMBH & Co. KG, Feld
Witten, Germany 58456

Chester Salomon
Stevens & Lee
485 Madison Ave., 20th Floor
New York, NY 10022

City of Coppell/Coppell ISD
Mary McGuffey, Tax Assessor Collector
PO Box 9478
Coppell, TX 75019

Kent Abercrombie
Superior Air Parts, Inc.
621 S. Royal Lane, Suite 100
Coppell, TX 75019-3805

Neil J. Orleans
Goins, Underkolfer, et al, LLP
1201 Elm Street, Ste. 4800
Dallas, TX 75270

Howard A. Borg/James T. Jacks
Ass't US Atty for FAA
Burnett Plaza, Suite 1700
801 Cherry Street, Unit 4
Fort Worth, Texas 76102-6882

Laurie A. Spindler
Linebarger Goggan et al, LLP
2323 Bryan Street Suite 1600
Dallas, TX 75201

Jeffrey N. Thom, Q.C.
Miller Thomson LLP
3000, 700 - 9th Avenue SW
Calgary, AB T2P 3V4

Gordon J. Toering
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, NW
Grand Rapids, Michigan 49503

Anita F. McMahon
1646 Belmont Ave.
Baton Rouge, LA 70808

Michael L. Jones
Henry & Jones, LLP
2902 Carlisle Street, Ste. 150
Dallas, TX 75204

LARRY K. HERCULES
ATTORNEY AT LAW
1400 Preston Road, Suite 280
Plano, Texas 75093

Gregory B. Gill, Jr.
Gill & Gill, S.C.
128 North Durkee St.
Appleton, WI 54911

Laura Boyle
TW Telecom, Inc.
10475 Park Meadows, Dr. #400
Littleton, CO 80124

Melissa S. Hayward
LOCKE LORD BISSELL & LIDDELL LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201
Counsel for the Insurers

Vincent Slusher/J. Seth Moore
Beirne Maynard & Parsons, LLP
1700 Pacific Ave., Ste. 4400
Dallas, TX 75201
Attys for Theilert Aircraft Engines
GMBH

Mary Frances Durham
U.S. Department of Justice
Office of the United States Trustee
1100 Commerce Street, Room 976
Dallas, TX 75242

Stefano Gazzola
Zanzi, S.p.A.
Corso Vercelli, 159
10015 Ivrea, Italy

Piyush Kakar
Seal Science Inc.
17131 Daimler
Irvine, CA 92614

Jim Griffin
Hartford Aircraft Products
94 Old Poquonock Road
Bloomfield, CT 06002

Phil Eck
Eck Industries, Inc.
1602 North 8th Street
Manitowoc, WI 54221-0967

Werner Wilhelm Albus
Valeria de Freitas Mesquita
KSPG Automotive Brazil LTDA
Rodovia Arnaldo Julio Mauerbert,
n. 4000-Distrito Industrial 01
Nova Odessa- SP Brasil
Caixa Postal 91
Susan B. Hersh
12770 Coit Rd. Ste. 1100
Dallas, TX 75251

Ronald Weaver
Avstar
1365 Park Lane South
Jupiter, FL 33458

Linda Boyle
TW Telecom, Inc.
10475 Park Meadows Dr. #400
Littleton, CO 80124

William G. Burd/Krystina N. Jiron
Atkinson & Brownell, PA
2 South Biscayne Blvd., Suite 3750
Miami, FL 33131

David W. Parham,
Elliot Schuler & A. Swick
Baker & McKenzie LLP
2001 Ross Ave., Suite 2300
Dallas, TX 75201

Timothy S. McFadden
LOCKE LORD BISSELL & LIDDELL LLP
111 South Wacker Drive
Chicago, IL 60606
Counsel for the Insurers

Billy G. Leonard, Jr.
Attorney at Law
1650 W. Virginia Street, Suite 211
McKinney, Texas 75069

Kevin H. Good
Conner & Winters LLP
1700 Pacific Avenue
Suite 2250
Dallas, Texas 75201